

REMARKS/ARGUMENTS

Claims 42 – 52 and 54 are presented for reconsideration and further examination in view of the foregoing amendments and following remarks.

In the outstanding Office Action, the Examiner rejected claims 42 – 54 under 35 U.S.C. 103(a) as being anticipated by U.S. Patent No. 5,474,081 to Livingstone et al. (hereinafter referred to as “Livingstone”) in view of U.S. Patent Application Publication No. 2001/0049480 to John et al. (hereinafter referred to as “John”).

By this Response and Amendment, claim 42 is amended to include the features of claim 53, claim 53 is accordingly cancelled without prejudice or disclaimer, claims 47 and 49 are amended to depend from amended claim 42, claim 51 is amended to place the claim in independent form and to include the features of parent claim 42, and the rejections under 35 U.S.C. 103 are traversed. It is respectfully submitted that the above amendments, which are made only to place two claims in independent form and to correct dependencies, do not introduce any new matter to this application within the meaning of 35 U.S.C. 132. Support for the amendments may be found in claims 51 and 53 as originally filed.

REJECTION UNDER 35 U.S.C. 103(a)

The Examiner rejected claims 42 – 54 under 35 U.S.C. 103(a) as being unpatentable over Livingstone in view of John.

RESPONSE

Reconsideration and withdrawal of the rejection are requested.

To establish a *prima facie* case of obviousness, the Examiner must establish: (1) that some suggestion or motivation to modify the references exists; (2) a reasonable expectation of success; and

(3) that the prior art references teach or suggest all of the claim limitations. *Amgen, Inc. v. Chugai Pharm. Co.*, 18 USPQ2d 1016, 1023 (Fed. Cir. 1991); *In re Fine*, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988); *In re Wilson*, 165 USPQ 494, 496 (CCPA 1970).

By this Response and Amendment, Applicants respectfully traverse the Examiner's rejection since the cited prior art does not disclose, teach or suggest all of the features of independent claim 42, or of those claims dependent therefrom.

Independent claim 42 has been amended to include the features of original claim 53, and now recites "a system for performing a medical examination comprising," *inter alia*, "*means for determining if said electrical signals drift* by using an average algorithm to smooth out said electrical signals over a period of time resulting in a curve of average signals versus time, integrating each segment of said curve and determining if the maximum value after segment integration exceeds a threshold value" (Present Application, Claim 42, emphasis added).

Independent claim 51 has been amended into independent form, and to include the features of parent claim 42, and now recites "a system for performing a medical examination comprising," *inter alia*, "*means for determining if said data abruptly jumps beyond predetermined ranges.*" (Present Application, Claim 51, emphasis added).

Livingstone is drawn to a method and apparatus for determining a defective magnocellular pathway in the visual system of a subject. (Livingstone, Abstract).

John is drawn to an apparatus and method for assessing a subject's hearing by recording steady-state auditory evoked responses (SSAERs). The apparatus is adapted to reduce noise in the sensed potentials by employing sample weighted averaging. (John, Abstract)

At page 4 of the outstanding Office Action, in reference to original claim 53, the Examiner erroneously asserts that Livingstone "discloses a medical examination system wherein

means for comparing said data to said predetermined values comprises a computer program...consisting of algorithms (column 8 lines 31 – 40)...(c) for determining and recording if said data abruptly jumps beyond predetermined ranges...(d) for determining and recording if said electrical signals drift by using an averaging algorithm to smooth said electrical signals over time...and (e) for determining and recording if the maximum value after segment integration exceeds a threshold value.” The Examiner also notes that John “also discloses a variety of signal generating and data processing algorithms.”

These assertions are traversed.

The combination of Livingstone and John fails to render the presently claimed inventive subject matter obvious, as it does not disclose, teach, or suggest “means for determining if said electrical signals drift by using an average algorithm to smooth out said electrical signals over a period of time resulting in a curve of average signals versus time, integrating each segment of said curve and determining if the maximum value after segment integration exceeds a threshold value” (Present Application, Claim 42) or “means for determining *if said data abruptly jumps* beyond predetermined ranges” (Present Application, Claim 51, emphasis added).

Moreover, the combination of Livingstone and John fails to disclose, teach, or suggest “means for determining whether...electrical signals reach a maximum value output *of said [amplifying] means*” (Claim 47, emphasis added), or “means for determining if the Fourier component of...*electrical signals at 60 Hz* exceeds a threshold value” (Claim 49, emphasis added).

As addressed in the previous Response of July 27, 2006, Livingstone is completely silent as to comparing measured data to predetermined values to test for “unreliable test results.” Further, Livingstone at column 8 lines 31 – 40 nowhere suggests any of the various algorithms

claimed herein for comparing data to predetermined values to determine if the data indicates unreliable data results. Applicants are unable to find even a single use of the word “algorithm” in the specification of Livingstone.

While the Examiner cites John at paragraphs 169 – 207 to cure the deficiencies of Livingstone, John too nowhere suggests any of the various algorithms claimed herein for comparing data to predetermined values to determine if the data indicates unreliable data results. Applicants have carefully reviewed John at paragraphs 169 – 207, and submit that these paragraphs are directed to methods of “sample weighted averaging” to result in “SSAEP responses with...higher SNR.” (John, para. 169), and not to determining if data indicates unreliable results. For example, a “phase weighted t-test is used to detect *the presence of SSAEP responses* in the recorded EEG data.” (John, para. 170, emphasis added), or “*the presence of a response* can be statistically assessed by *assessing the SSAEP responses* for each sweep or even for each epoch.” (John, para. 192, emphasis added). That is, John at paragraphs 169 – 207 (as cited by the Examiner) is drawn to a detection module 50 for performing statistical methods for *detection* of SSAEP evoked potentials (John, para. 205). This is the opposite of the present application, in which data is *compared to predetermined values to determine if the data indicates unreliable data results*.

In traversal of the Examiner’s assertion, Applicants further submit that John discloses only a limited number of data processing algorithms, and that *John is silent as to the specific determinations claimed herein*, namely, “determining if said electrical signals drift by using an average algorithm to smooth out said electrical signals over a period of time resulting in a curve of average signals versus time, integrating each segment of said curve and determining if the maximum value after segment integration exceeds a threshold value” (Present Application,

Claim 42), “determining if...data *abruptly jumps* beyond predetermined ranges” (Present Application, Claim 51, emphasis added), “determining whether...electrical signals reach a maximum value output of *said [amplifying] means*” (Present Application, Claim 47, emphasis added), or “determining if the Fourier component of...*electrical signals at 60 Hz* exceeds a threshold value” (Present Application, Claim 49, emphasis added). Applicants are unable to find even a single use of the word “drift” in John, in contrast to amended claim 42. Applicants are further unable to find even a single use of the words “abrupt” or “jump” in John, in contrast to amended claim 51.

As the combination of Livingstone and John fails to disclose, teach, or suggest all the features of independent claim 42, and thus of claims 43 – 50, 52, and 54 dependent therefrom, and of independent claim 51, Applicants submit that the Examiner has failed to make a *prima facie* case of obviousness.

Applicants submit that claims 47 and 49 are allowable not only for the dependence from claim 42, but for the presence of those independent features addressed above not found in the cited prior art.

Applicants request that the Examiner reconsider and withdraw the rejections under 35 U.S.C. 103(a) of claims 42 and 51, and of all claims dependent therefrom.

The rejection of claim 53 has been obviated by its cancellation, which is made without prejudice or disclaimer.

CONCLUSION

In light of the foregoing, Applicants submit that the application is now in condition for allowance. If the Examiner believes the application is not in condition for allowance, Applicants

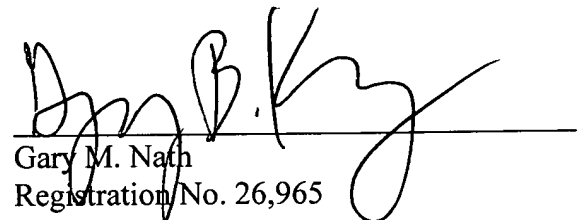
respectfully request that the Examiner contact the undersigned attorney if it is believed that such contact will expedite the prosecution of the application.

In the event this paper is not timely filed, Applicants petition for an appropriate extension of time. Please charge any fee deficiency or credit any overpayment to Deposit Account No. 14-0112.

Respectfully submitted,
NATH & ASSOCIATES PLLC

Date: December 11, 2006

NATH & ASSOCIATES PLLC
112 South West Street
Alexandria, VA 22314
(703) 548-6284



Gary M. Nath
Registration No. 26,965
Gregory B. Kang
Registration No. 45,273
Matthew J. Moffa
Registration No. 58,860
Customer No. 20259